SUPREME COURT OF THE UNITED STATES.

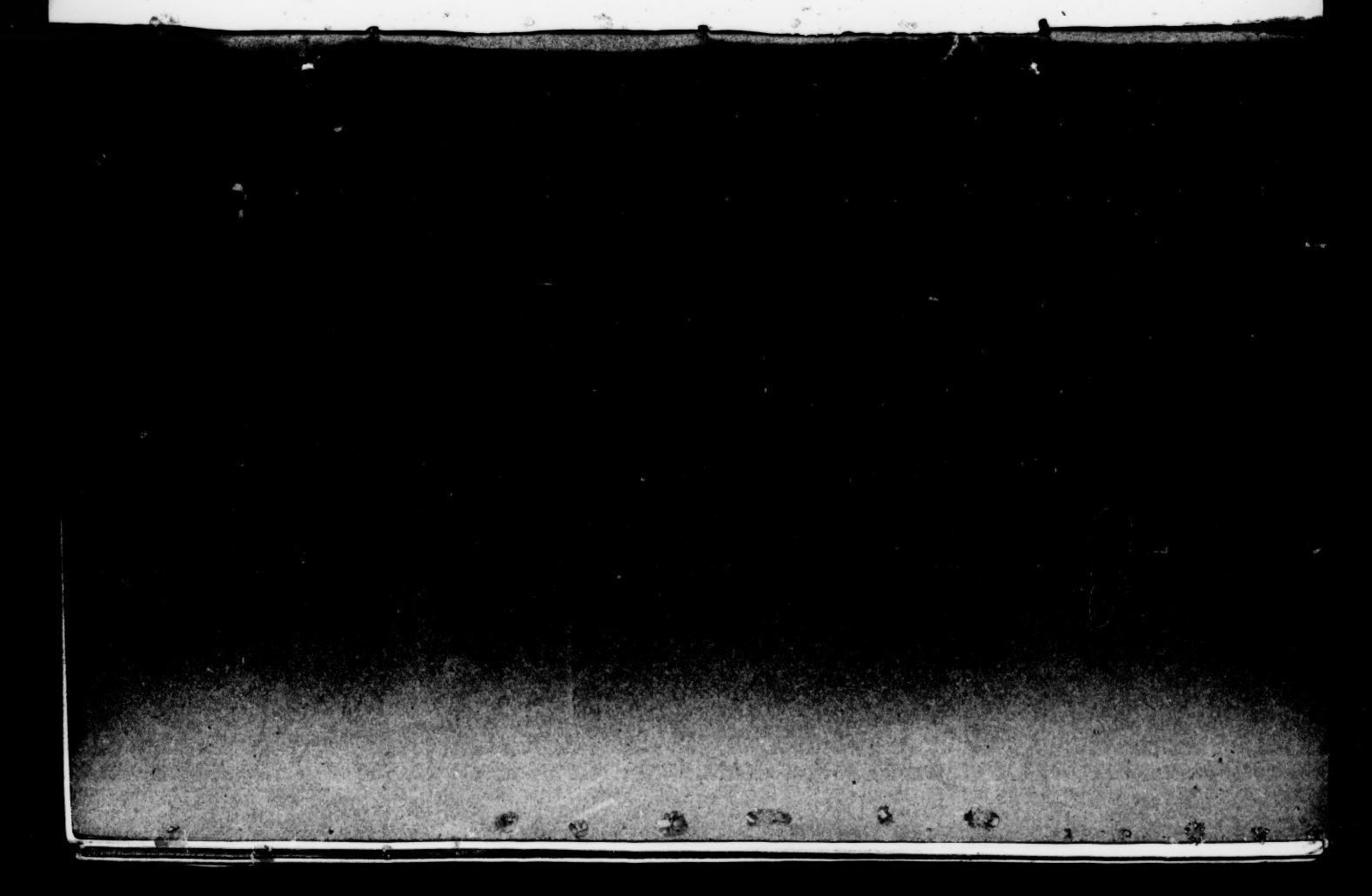
No. 352.

THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

JOHN SHELLY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.



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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the third circuit and district of New Jersey, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said circuit court before you, between the United States of America and John Shelly, a manifest error hath happened, to the great damage of the said United States, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the fourteenth day of January next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this twelfth day of December, in the year of our Lord one thousand eight hundred and sixty three, and of the independence of the United States the eighty-eighth.

ANDREW DUTCHER, *Clerk.*
A. Q. KEASBEY.
U. S. District Att'y.

2 Returnable January 14, 1864.

A. Q. KEASBEY,
U. S. District Att'y.

3 UNITED STATES OF AMERICA, *ss:*

To John Shelly, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the fourteenth day of January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the third circuit and district of New Jersey, wherein the United States are plaintiffs and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Richard S. Field, one of the judges of the circuit court of the United States for the third circuit and district of New Jersey, the twelfth day of December, 1863.

R. S. FIELD, *Judge.*

I acknowledge due and legal service of the within citation, Dec. 12, 1863.

C. H. WINFIELD, *Att'y.*

4 Pleas before the United States circuit court for the third circuit, and in and for the district of New Jersey, in the term of September, in the year of our Lord one thousand eight hundred and sixty-three: the honorable Robert C. Grier, associate justice of the Supreme Court of the United States, and the honorable Richard S. Field, judge of the district of New Jersey, judges.

ANDREW DUTCHER, *Clerk.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judge of the district court of the United States for the district of New [SEAL.] Jersey, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said district court before you, between the United States and John Shelly, a manifest error hath happened to the great damage of the said the United States, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in that behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the circuit court of
5 the United States for the third circuit and district of New Jersey, together with the writ, so that you have the same at Trenton, in the said district, on the twenty-fourth day of November next, in the said circuit court to be then and there held, that the record and proceedings aforesaid being inspected, the said circuit court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Trenton, the twenty-eighth day of October, in the year of our Lord one thousand eight hundred and sixty-three, and of our independence the eighty-eighth.

ANDREW DUTCHER, *Cl'k.*
A. Q. KEASBEY,
U. S. Dist. Att'y.

The record and proceedings whereof mention is within made, together with all things touching and concerning the same, I certify to the circuit court of the United States, annexed to this writ as within I am commanded.

R. S. FIELD,
District Judge.

Pleas before the United States district court for the district of New Jersey, in the term of September, eighteen hundred and
6 sixty-three: Hon. Richard S. Field, U. S. district judge; R. H. Shreve, cl'k.

In the district court of the United States for the district of New Jersey, of the first Monday of June, in the year of our Lord one thousand eight hundred and sixty-three.

DISTRICT OF NEW JERSEY, *ss:*

John Shelly was summoned to answer the United States of America, who sue as well for Daniel M. Wilson, collector of internal revenue for the fifth district of New Jersey, as for themselves in this behalf, of a plea that he render unto the said the United States and to the said Daniel M. Wilson, collector as aforesaid, the sum of five hundred dollars, which he owes to and unjustly detains from them; and thereupon the said plaintiffs, by Anthony Q. Keasbey, their attorney, complain: for that, whereas, heretofore, to wit, on the first day of April, in the year of our Lord one thousand eight hundred and sixty-three, and on divers days and times between that day and the commencement of this suit, and during the continuance of a certain act of Congress of the United States of America, entitled "An act to amend 'an act to provide internal revenue to support the government and to pay interest on the public debt,' approved July first, eighteen hundred and sixty-two, and for other purposes," at Jersey City, in the county of Hudson, in the said district, the said defendant did exercise and carry on the trade or business of a lottery ticket dealer, for the exercising and carrying on of which trade or business a license was required by the said act of Con-
7 gress, without taking out such license, as in that behalf required, contrary to the aforesaid act of Congress of the United States of America, approved July 1, 1862, and the said act to amend the same, in such case made and provided; whereby and by virtue of the said acts of Congress, in such case made and provided, he, the said defendant, hath forfeited and become liable to pay to the uses expressed in the said act of Congress, the sum of five hundred dollars, being three times the amount of the duty or sum of money imposed for such license, and thereby and by force of the said statute in such case made snd provided, an action hath accrued to the said United States, who sue as aforesaid, to demand and have for the said Daniel M. Wilson, collector as aforesaid, and for themselves in this behalf, of and from the said John Shelly, the said sum of five hundred dollars, so forfeited as aforesaid, being the sum above demanded. Yet the said defendant (although often requested so to do) hath not as yet paid the said sum of five hundred dollars above demanded, or any part thereof, to the said plaintiffs; but to do this hath hitherto wholly refused and still doth refuse, to the damage of the plaintiffs of ten dollars, and therefore they bring their suit, &c.

And the said John Shelby, by Charles N. Winfield, his attorney, comes and defends the wrong and injury, when, &c., and says that he does not owe to Daniel M. Wilson, and to the United States of America, who sue as aforesaid, or to either of them, the said sum of money above demanded, or any part thereof, in manner and form as the said the United States of America, who sue as aforesaid,

8 have above thereof complained against him; and of this he puts himself upon the country, &c.

And, for a further plea in this behalf, the said defendant, by leave of the court held for this purpose, first had and obtained according to the form of the statute in such case made and provided, says, that he ought not to be charged with the said debt by virtue of the said supposed act of Congress of the United States and amendment thereto, because he says that by a certain act of the legislature of the State of New Jersey, entitled "An act for suppressing of lotteries," approved the tenth day of April, eighteen hundred and forty-six, in the words following, to wit:

"SEC. 1. All lotteries for money, goods, wares, merchandise, chattels, lands, tenements, hereditaments, or other matters or things whatsoever, shall be, and hereby are, adjudged to be common and public nuisances; and the supreme court and the courts of oyer and terminer and general jail delivery, and the courts of general quarter sessions of the peace, shall respectively have cognizance of such offences.

"SEC. 2. No person or persons shall within this State, publicly or privately, erect, set up, open, make or draw any such lottery or lotteries; and every person who shall offend in the premises, shall forfeit for every such offence two thousand dollars, to be recovered by action of debt with costs, by any person who will sue for the same in any court of record having cognizance thereof; and the person so offending shall likewise be proceeded against by way of indictment, as is directed in the preceding section; and all penalties re-
9 covered under this act shall be appropriated to the use of the county in which the action or actions for the recovery thereof shall have been prosecuted; and in every action instituted under this act, the inhabitants of the county where the same is instituted shall be competent to serve as jurors and admitted as witnesses in any such action, notwithstanding their liability to taxation or being interested.

"SEC. 3. If any person shall give, barter, sell, or otherwise dispose of, or offer to give, barter, sell, or otherwise dispose of, any ticket or tickets in any lottery, whether erected, set up, opened, or made in this State or elsewhere; or if any person shall be aiding or assisting in any such lottery by printing, writing, or in any other manner publishing an account thereof, or where tickets may be had or obtained in the same, or if any person shall set up, show, or expose to public view any scheme or schemes, advertisement or advertisements of or concerning such lottery, or shall permit or suffer any such lottery to be drawn in or on his or her house or land, every person so offending shall for every offence forfeit and pay the sum of thirty dollars, to be recovered and applied in the manner prescribed in and by the section next preceding.

"SEC. 4. Every grant, bargain, sale, conveyance, or transfer of any goods, chattels, lands, tenements, hereditaments, or real estate, which shall be made in pursuance of such lottery, is hereby declared to be invalid and void.

"SEC. 5. This act shall not extend to or affect any lottery which shall be established by or under the authority of the United
10 States, or which has been or shall be established by or under the authority of the legislature of this State."

And by a certain supplement thereto, approved on the twenty-fourth day of March, in the year eighteen hundred and fifty-two, in the following words, to wit:

"SEC. 1. If any person shall give, barter, or sell, or otherwise dispose of, or offer to give, barter, sell, or otherwise dispose of, any ticket or tickets, or any share or interest in any ticket or tickets, in any lottery, whether erected, set up, opened, or made in this State or elsewhere, or the chance or chances of any such ticket or tickets, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine not exceeding one hundred dollars, or imprisonment at hard labor not exceeding one year, or both.

"SEC. 2. If any person or persons shall issue any policy of insurance, or insure or receive any consideration for insuring for or against the drawing of any ticket or tickets, number or numbers, or any share or interest in any ticket or tickets in any lottery, or shall receive any money, goods or things in action, in consideration of any agreement to repay any sum or sums of money, or to deliver any goods or thing in action, if any ticket or tickets, or any share of any ticket or tickets, in any lottery shall prove fortunate or unfortunate, or shall be drawn or not drawn, on any particular day, or in any particular order, or shall promise or agree to pay any sum of money, or deliver any goods or thing in action, or to do or forbear to do anything for the
11 benefit of any other person or persons upon any event or contingency dependent on the drawing of any ticket or tickets, or any share of any ticket or tickets, or upon drawing of any number or numbers in any lottery, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine not exceeding one hundred dollars, or imprisonment at hard labor not exceeding one year, or both.

"SEC. 3. It shall not be necessary, upon the trial of any indictment under this act, to prove the existence of any lottery in which any ticket, share, or part of a ticket, purports to have been issued, or the actual signing of any such ticket or share, or that any ticket, share or interest was signed or issued by the authority of any manager, or of any person assuming to have authority as manager, or the existence of any lottery in which any number or numbers may be charged to have been issued, but in all cases proof of the sale, furnishing, bartering or procuring of any ticket, share or interest therein, or of any instrument purporting to be a ticket, or part or share of any ticket, shall be conclusive evidence that such ticket, share or interest was signed and issued according to the purport thereof.

"SEC. 4. One-half of every fine inflicted and collected under any of the provisions of this act shall, when collected, be paid to the person giving information, by reason of which a conviction shall be had."

The said defendant is, and from the approval of said act hitherto hath been, prohibited and entirely precluded from exercising and carrying

on the lottery business in the State of New Jersey, and this the said defendant is ready to verify; wherefore he prays judgment if
12 he ought to be charged with the said debt by virtue of the said act of Congress of the United States, and the amendment hereto.

And the said plaintiffs, as to the said plea of the said defendant, by him first above pleaded, and whereof he hath put himself upon the country, do the like, &c.

And the said plaintiffs, as to the said plea of the said defendant by him secondly above pleaded, say that the same, and the matters therein contained in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude the said plaintiffs from having or maintaining their aforesaid action thereof against the said defendant, and that the said plaintiffs are not bound by law to answer the same, and this the said plaintiffs are ready to verify; wherefore, by reason of the insufficiencies of the said plea in this behalf, the said plaintiffs pray judgment, and their debt aforesaid, together with their damages by them sustained on occasion of the detention thereof, to be adjudged to them, &c.

And now, at this day, before the honorable Richard S. Field, judge of the United States district court. came the parties aforesaid.

But because the judge of our said court, now here, is not yet advised what judgment to give of and upon the premises, a day is given to the parties aforesaid, before our said court at Trenton, until the third Tuesday of September, in the year of our Lord one thousand eight hundred and sixty-three, to hear judgment thereon; at which day, before the honorable Richard S. Field, judge of our said court, at
13 Trenton, came the parties aforesaid, by their attorneys aforesaid, whereupon all and singular, the premises being seen, and by the court now here fully understood, and mature deliberation being thereupon had, it appears to the said court here that the said plea above pleaded by the said John Shelly in manner and form aforesaid, and the matters therein contained, are sufficient in law to bar the said the United States from having or maintaining their said action against the said John Shelly: Therefore, it is considered that the said the United States takes nothing by their said writ, and that the said John Shelly do go thereof without day.

I, Ralph H. Shreve, clerk of the United States district court for the district of New Jersey, do certify that the foregoing is a true copy of the judgment and proceedings in the above-stated case, as the same are on record in my office.

[SEAL.] In testimony whereof, I have hereunto set my hand and affixed the seal of said court this fourth day of November, in the year of our Lord one thousand eight hundred and sixty-three.

RALPH H. SHREVE, *Clerk.*

UNITED STATES OF AMERICA, *ss:*

To John Shelly, greeting:

You are hereby cited and admonished to be and appear at a circuit court of the United States, to be held at Trenton, in and for the dis-

trict of New Jersey, on the twenty-fourth day of November next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the said district of New Jersey,
14 wherein the United States are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this twenty-eighth day of October, in the year eighteen hundred and sixty-three.

R. S. FIELD,
District Judge.

United States circuit court, district of New Jersey.

THE UNITED STATES
vs.
JOHN SHELLY.

Afterwards, that is to say, on the twenty-fourth day of November, in the year eighteen hundred and sixty-three, before the judges of the circuit court of the United States for the district of New Jersey, in the third circuit, come the said the United States, by Anthony Q. Keasbey, their attorney, and say, that in the record and proceedings aforesaid, and in giving the judgment aforesaid, there is manifest error in this, that the said plea of the said defendant, by him secondly above pleaded, is not sufficient in law to bar or preclude the said plaintiffs from having and maintaining their aforesaid action thereof against him, the said John Shelly; and also, there is error in this, that the judgment aforesaid, by the record aforesaid, appears to have
15 been given for the said John Shelly *against the said John Shelly* against the said United States, whereas, by the law of the land, the said judgment ought to have been given for the said the United States against the said John Shelly.

And the said the United States pray that the judgment aforesaid, for the errors aforesaid, and for other errors in the said record and proceedings being, may be reversed, annulled, and altogether holden for naught, and that they may be restored to all things which they have lost by reason of the said judgment, &c.

A. Q. KEASBEY,
U. S. Dist. Att'y.

Circuit court of the United States, in and for the district of New Jersey.—September term, eighteen hundred and sixty-three.

THE UNITED STATES
vs.
JOHN SHELLY.
In Debt. On error to the U. S. dist. court of New Jersey.

And now, on this day, to wit, the twenty-fourth day of November, in the year of our Lord eighteen hundred and sixty-three, before the

honorable Robert C. Grier, associate justice of the Supreme Court of the United States, came the said parties, by their counsel, and this cause coming on for hearing on the transcript of the record from the United States district court of New Jersey, after considering the same, it is ordered and adjudged that the judgment of the said district court be in all things affirmed.

16 UNITED STATES OF AMERICA,
District of New Jersey, ss:

I, Andrew Dutcher, clerk of the United States circuit court for the third circuit and district of New Jersey, do hereby certify that the foregoing is a true copy of the record, judgment, and proceedings in the above-stated cause, as fully as the same remain on file and of record in my office.

[SEAL.] In testimony whereof, I have hereunto set my hand and affixed the seal of said circuit court at Trenton this twenty-sixth day of December, in the year of our Lord eighteen hundred and sixty-three.

ANDREW DUTCHER, *Clerk.*

Filed 12th January, 1864.